

**State of California
California Regional Water Quality Control Board, Los Angeles Region**

Resolution No. R4-2009-xx

**Amendment to the
*Water Quality Control Plan for the Coastal Watersheds
of Ventura and Los Angeles Counties*
to Prohibit Onsite Wastewater Disposal Systems
in the Malibu Civic Center Area**

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region (hereinafter Regional Board), finds that:

1. In the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (hereafter *Basin Plan*), the Regional Board designated beneficial uses and established water quality objectives for the following water resources in the Civic Center area of the City of Malibu:

Groundwater: Municipal and Domestic Supply (Potential), Industrial Process and Service Supply, and Agricultural Supply.

Malibu Lagoon: Navigation; Water Contact Recreation; Non-contact Water Recreation; Estuarine Habitat; Marine Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; Wetland Habitat.

Malibu Creek: Water Contact Recreation; Non-contact Water Recreation; Warm Freshwater Habitat; Cold Freshwater Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; Wetland Habitat.

Malibu Beach and Malibu Lagoon Beach (Surfrider Beach), Amarillo Beach, and Carbon Beach: Navigation; Water Contact Recreation; Non-contact Water Recreation; Commercial and Sport Fishing; Marine Habitat; Wildlife Habitat; Spawning, Reproduction, and/or Early Development; and Shellfish Harvesting.
2. In a 2006 Clean Water Act Section 303(d) list, approved by the United States Environmental Protection Agency (US EPA) on June 28, 2007, impairments to beneficial uses were formally identified for the following water resources:

Malibu Lagoon: impaired by Coliform Bacteria, Eutrophication.
Malibu Creek: impaired by Coliform Bacteria, Nutrients (Algae).
Malibu Beach: impaired by Indicator Bacteria.
Malibu Lagoon Beach (Surfrider Beach): impaired by Coliform Bacteria.
Carbon Beach: impaired by Indicator Bacteria.

3. To restore water quality and impaired beneficial uses, the US EPA and/or Regional Board have adopted the following Total Maximum Daily Loads (TMDLs):
- i. **Malibu Creek Watershed Nutrient TMDL:** The US EPA, on March 21, 2003, specified a numeric target of 1.0 mg/l for total nitrogen during summer months (April 15 to November 15) and a numeric target of 8.0 mg/L for total nitrogen during winter months (November 16 to April 14). Significant sources of the nutrient pollutants include discharges of wastewaters from commercial, public, and residential landuse activities. The TMDL specifies a load allocation for onsite wastewater disposal systems of 6 lbs/day during the summer months and 8 mg/L during winter months.
 - ii. **Malibu Creek and Lagoon Bacteria TMDL:** The Regional Board specified numeric targets, effective January 24, 2006, based on single sample and geometric mean bacteria water quality objectives in the *Basin Plan* to protect the water contact recreation use. Sources of bacteria loading include storm water runoff, dry-weather runoff, onsite wastewater disposal systems, and animal wastes. The TMDL specifies load allocations for onsite wastewater disposal systems equal to the allowable number of exceedance days of the numeric targets. There are no allowable exceedance days of the geometric mean numeric targets. For the single sample numeric targets, based on daily sampling, in summer (April 1 to October 31), there are no allowable exceedance days, in winter dry weather (November 1 to March 31), there are three allowable exceedances days, and in wet weather (defined as days with ≥ 0.1 and the three days following the rain event), there are 17 allowable exceedance days.
 - iii. **Santa Monica Bay Beaches Wet and Dry Bacteria TMDL:** For beaches along the Santa Monica Bay impaired by bacteria in dry and wet weather, the Regional Board specified numeric targets, effective July 15, 2003, based on the single sample and geometric mean bacteria water quality objectives in the *Basin Plan* to protect the water contact recreation use. The dry weather TMDL identified the sources of bacteria loading as dry-weather urban runoff, natural source runoff and groundwater. The wet weather TMDL identified stormwater runoff as a major source. The TMDLs did not provide load allocations for onsite wastewater disposal systems, meaning that no exceedances of the numeric targets are permissible as a result of discharges from non-point sources, including onsite wastewater disposal systems. There are no allowable exceedance days of the geometric mean numeric targets. For the single sample numeric targets, based on daily sampling, in summer (April 1 to October 31), there are no allowable exceedance days, in winter dry weather (November 1 to March 31), there are three allowable exceedances days, and in wet weather (defined as days with ≥ 0.1 and the three days following the rain event), there are 17 allowable exceedance days.

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4. Pursuant to Water Code Section 13243, the Regional Board may, in its *Basin Plan*, specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. During a public meeting on December 14, 1998, the Regional Board directed the Executive Officer to prepare a prohibition for consideration by the Regional Board. During a public meeting on November 13, 2008, the Regional Board discussed the need for a firm time schedule to address water quality problems in the Malibu Civic Center area and again directed staff to prepare a prohibition for Board consideration.
5. In accordance with the California Water Code, sections 13280 and 13281, Regional Board staff presented technical evidence, in a public hearing on October 1, 2009, demonstrating that discharges of wastewater in the Civic Center area fail to meet water quality objectives established in the *Basin Plan* and contribute to impairments of existing or potential beneficial uses of water resources. The evidence, as presented in a Technical Staff Report, includes the following conclusions:
 - i. Dischargers subject to Orders from the Regional Board that specify waste discharge requirements (WDRs) for OWDSs have poor records of compliance.
 - ii. Discharges of wastewaters released from OWDSs to groundwater contain elevated levels of pathogens and nitrogen that impair underlying groundwater as a potential source of drinking water.
 - iii. Discharges of wastewaters released from OWDSs to groundwater that is in hydraulic connection with beaches along the mouths of unsewered watersheds transport pathogens that elevate risks of infectious disease for water contact recreation.
 - iv. Discharges of wastewaters released from OWDSs to groundwater that is in hydraulic connection with Malibu Lagoon transport a nitrogen load significantly in excess of the wasteload allocation in the TMDL established to restore water quality to a level sufficient to protect aquatic life and prevent nuisance resulting from eutrophication.
 - v. Wastewater flows in the Civic Center area have been increasing. On many sites, hydrogeologic conditions are unsuitable for high flows of wastewater, and many dischargers generate wastewater flows at rates that exceed their capacity to discharge on-site. These dischargers rely on pumping significant flows into tanker trucks that haul liquid sewage and sludge via public roadways to communities that have sewer and wastewater treatment facilities.
6. A peer review was conducted, pursuant to California Health and Safety Code section 57004.

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7. No authorized public agency has offered satisfactory assurance that discharge systems are appropriately designed, located, sized, spaced, constructed, and maintained, such that they are adequate to protect the quality of water for beneficial uses in the Malibu Civic Center area, pursuant to the CWC section 13282.
8. Pursuant to the California Water Code, section 13283, the State Water Resources Control Board (State Board) shall include a preliminary review of possible alternatives necessary to achieve protection of water quality and present and future beneficial uses of water, and prevention of nuisance, pollution, and contamination, including, but not limited to, community collection and waste disposal systems which utilize subsurface disposal, and possible combinations of individual disposal systems, community collection and disposal systems which utilize subsurface disposal, and convention treatment systems. The Regional Board has conducted a preliminary review of possible alternatives, as documented in the staff report.
9. The basin planning process has been certified as functionally equivalent to the California Environmental Quality Act (CEQA), including preparation of an initial study, negative declaration, and environmental impact report (14 CCR, section 15251(g)). As this amendment is part of the basin planning process, staff has prepared an Environmental Staff Report, which is considered a substitute to an initial study, negative declaration, and/or environmental impact report. This Environmental Staff Report satisfies the substantive requirements of the California Code of Regulations, title 23, section 3777(a), and includes a project description, environmental checklist, reasonable alternatives, and mitigation measures.

THEREFORE, be it resolved that:

1. The Regional Board finds substantial evidence that discharges from septic systems in the Malibu Civic Center area fail to meet water quality objectives and impair both existing and potential beneficial uses of water, as documented in the Final Technical Staff Report, dated October 1, 2009. Pursuant to section 13240 of the California Water Code, the Regional Board hereby amends the *Basin Plan* to include a prohibition on discharges from individual/group septic/disposal systems in the Civic Center area. This amendment, as set forth in Attachment A, will:
 - Prohibit all new discharges.
 - Prohibit discharges from existing systems within five years from the date of adoption by the Regional Board of this *Basin Plan* amendment.
 - A specific discharge may be permitted for a “zero-discharge” project if a discharger can demonstrate, to the satisfaction of the Executive Officer, that reuse, evaporation, and/or transpiration will use 100% of the wastewater generated by activities on a site, will not contribute to a rise in the water table, and will contain and properly handle

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- any brines and/or off-specification wastewaters that cannot be reused/discharged in a manner that meets water quality objectives established in the *Basin Plan*.
2. The Regional Board adopts and certifies the Final Environmental Staff Report, including the environmental checklist, dated October 1, 2009.
 3. The Regional Board directs the Executive Officer to submit these regulatory actions to the State Board and Office of Administrative Law for review and approval.
 4. This prohibition is not intended to prevent repairs and maintenance to existing septic/disposal systems, provided that repairs and maintenance do not expand the capacity of the systems and increase flows of wastewaters.
 5. On behalf of dischargers in the Civic Center area, the City is hereby directed to submit quarterly written reports to the Executive Officer, summarizing the strategy and progress toward meeting the five-year prohibition deadline. In the quarterly progress reports, the City shall document progress, to the satisfaction of the Executive Officer, toward the following interim and final deadlines:

April 1, 2010: Completion of 25% of a master facilities plan for possible projects to comply with the prohibition, including initiation of a strong public participation program.

October 1, 2010: Completion of 50% of a master facilities plan and initiation of environmental review, with strong, on-going public participation. Concurrently, initiation of preliminary engineering and a feasibility study for possible projects to comply with the prohibition.

April 1, 2011: Substantial completion of a master facilities plan, preliminary engineering and a feasibility study, and engagement of the public in selection of a project to comply with the prohibition.

October 1, 2011: Completion of a master facilities plan, preliminary engineering and a feasibility study, and selection of a project to comply with the prohibition.

October 1, 2012: Completion of final design for selected project.

October 1, 2013: Completion of 50% of construction of selected project.

October 1, 2014: Completion of project to comply with prohibition, including successful startup of facilities, residential and commercial connections to the project facilities, and cease discharge from OWDSs.

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The first progress report is due December 31, 2009, and subsequent quarterly progress reports are due on March 31st, June 30th, September 30th, and December 31st of the following years.

The City may, upon approval from the Executive Officer, transfer this responsibility to another public agency.

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on October 1, 2009.

Tracy J. Egoscue
Executive Officer

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Attachment A: Language to be inserted into the *Basin Plan*

The *Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties (Basin Plan)* contains a section entitled “Septic Systems” in Chapter 4. This amendment to the *Basin Plan* revises the section entitled “Septic Systems,” as indicated by italicized, underlined text for additions, and text strikeouts for deletions.

Septic Systems

~~The California Water Code, Chapter 4, Article 5, sets forth criteria for regulating individual disposal systems (i.e., residential septic tanks). Prior to the 1950s, the Regional Board placed certain types of septic tank systems under individual WDRs. In the 1950s, the regional Board delegates local health or public works departments jurisdiction to permit and regulate septic tank disposal systems, typically for single family dwellings. However, the Regional Board could exercise jurisdiction over multiple dwelling units, some non-domestic septic tank systems, and large developments in certain problem areas, as well as in any situation where systems are creating or have the potential to create a water quality problem.~~

Malibu Civic Center Area

On October 1, 2009, the Regional Board amended the Basin Plan to prohibit on-site wastewater disposal systems (OWDSs) in the Malibu Civic Center area (figure 4-xx), pursuant to section 13280 of the California Water Code. Effective immediately:

- *All new on-site wastewater disposal system discharges are prohibited.*
- *All wastewater discharges from existing on-site wastewater disposal systems are prohibited five yers from the date of adoption by the Region Board of this Basin Plan amendment.*
- *A specific wastewater discharge may be permitted if a discharger can demonstrate, to the satisfaction of the Executive Officer, that reuse, evaporation, and/or transpiration will use 100% of the wastewater generated by activities on a site, will not contribute to a rise in the water table, and will contain and properly handle any brines and/or off-specification wastewaters that cannot be reused/discharged in a manner that meets water quality objectives established in the Basin Plan.*

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This action was supported by technical evidence that concluded:

- i. Dischargers subject to Orders from the Regional Board that specify waste discharge requirements (WDRs) for OWDSs have poor records of compliance.
- ii. Discharges of wastewaters released from OWDSs to groundwater contain elevated levels of pathogens and nitrogen that impair underlying groundwater as a potential source of drinking water.
- iii. Discharges of wastewaters released from OWDSs to groundwater that is in hydraulic connection with beaches along the mouths of unsewered watersheds transport pathogens that elevate risks of infectious disease for water contact recreation.
- iv. Discharges of wastewaters released from OWDSs to groundwater that is in hydraulic connection with Malibu Lagoon transport a nitrogen load significantly in excess of the wasteload allocation in the TMDL established to restore water quality to a level sufficient to protect aquatic life and prevent nuisance resulting from eutrophication.
- v. Wastewater flows in the Civic Center area have been increasing. On many sites, hydrogeologic conditions are unsuitable for high flows of wastewater, and many dischargers generate wastewater flows at rates that exceed their capacity to discharge on-site. These dischargers rely on pumping significant flows into tanker trucks that haul liquid sewage and sludge via public roadways to communities that have sewer and wastewater treatment facilities.

The prohibition is not intended to prevent repairs and maintenance to existing septic/disposal systems, provided that repairs and maintenance do not expand the capacity of the systems and increase flows of wastewaters.

Oxnard Forebay Septic Prohibition

On August 9, 1999, the Regional Board amended the Basin Plan to include a prohibition on septic systems in the Oxford Forebay (figure 4-xx), pursuant to Section 13280 of the California Water Code. The prohibition applies to both future and existing septic systems in the Oxford Forebay. As of August 9, 1999, new septic systems in the Oxford Forebay were prohibited. By January 1, 2008, discharges from existing septic systems must cease. This action was taken in view of:

- The conclusion that discharges of wastewaters from residential and commercial facilities to groundwater underlying the Oxford Forebay do not meet water quality objectives specified in the Basin Plan, and are impairing the present and future beneficial uses of underlying resources of ground water.

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- The need to ensure long-term protection of ground water underlying both the Oxford Forebay and the Oxford Plain. Alternatives to replace these supplies of local water, or to treat the water before beneficial use, would be costly and would violate the requirement to protect the water for beneficial uses.

The prohibition is not intended to prevent repairs to existing septic systems in the Oxford Forebay prior to [a date five year from Regional Board adoption of the amendment], provided that the purpose of such repairs is not to increase capacity.

Other Areas

In other areas, where ground water constitutes an important source of drinking water, the Regional Board has adopted general WDRs (Order 91-94) for certain private residential subsurface sewage disposal systems. A lot with size less than 1 acre is not eligible for these general WDRs; for those lots between one and less than five acres in size, the General WDRs require either a hydrogeologic study or mitigation measures. WDRs are not required for lot sizes greater than five acres.

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